

Eighth Circuit Precedent

ASYLUM, WITHHOLDING, CONVENTION AGAINST TORTURE

Mayorga-Rosa v. Sessions, No. 17-1643, ___ F.3d ___, 2018 WL 1916796 (8th Cir. Apr. 24, 2018).

The Eighth Circuit denied the PFR, holding that the IJ was not required to seek clarification as to the particular social group for alien's asylum claim or make specific findings on each element of the asylum claim. The court also determined that the proposed social group of individuals in Guatemala who were once recruited and threatened by gang members, but who did not join or assist the gang, was not "defined with particularity," as required to support the asylum claim.

Lopez v. Sessions, 886 F.3d 721 (8th Cir. 2018).

The Eighth Circuit denied the PFR, upholding the agency decision that the petitioner did not suffer harm rising to the level of persecution and stating that minor beatings, unfulfilled threats of physical injury, and low-level intimidation or harassment normally do not amount to persecution. The court also upheld the BIA's determination that the petitioner did not establish a well-founded fear of future persecution where she legally separated from her husband, her only reported trouble with him after separating was a set of abusive text messages, which ceased after she changed her telephone number, he complied with a judge's direction that he should not enter her house, and where a male neighbor she fears is now incarcerated.

Baltti v. Sessions, 878 F.3d 240 (8th Cir. 2017), *vacating and superseding Baltti v. Sessions*, 862 F.3d 718 (8th Cir. 2017).

The Eighth Circuit denied the PFR, concluding that substantial evidence supported the Board's determination that there was no nexus between any possible persecution of petitioner and his political opinion or any other statutorily protected ground, and that petitioner's fear of future persecution was not objectively reasonable. Regarding lack of nexus, the court noted the Board's finding that petitioner's detention in a military camp occurred prior to him speaking out against the Ethiopian government, and therefore, it could not have been the cause of his detention.

ADJUSTMENT OF STATUS & WAIVERS

None

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BOND

None

CANCELLATION OF REMOVAL

Rodriguez-Labato v. Sessions, 868 F.3d 690 (8th Cir. 2017).

The Eighth Circuit denied the PFR, concluding that the alien's failure to receive the warnings at 8 C.F.R. § 1240.25 "does not preclude a finding of a voluntary departure under threat of deportation sufficient to break the ten-year period of continuous presence required to be eligible for cancellation of removal."

CRIMINAL CASES IN THE IMMIGRATION CONTEXT

Onduso v. Sessions, 877 F.3d 1073 (8th Cir. 2017).

The Eighth Circuit denied the PFR, concluding that petitioner's 2004 conviction in violation of Minn. Stat. § 608.2242, subd. 1 (misdemeanor domestic assault) categorically qualifies as a crime of violence under 18 U.S.C. § 16(a). The court agreed with the Board that the then-applicable Eighth Circuit and Minnesota precedent suggested that both subsections satisfy section 16(a). The court held that whichever provision served as the basis for petitioner's conviction, it finds that it necessarily involved a crime of violence and thereby qualifies as a crime of domestic violence under section 237(a)(2)(E)(i) of the Act.

Ramirez-Barajas v. Sessions, 877 F.3d 808 (8th Cir. 2017).

The Eighth Circuit denied the consolidated PFRs, concluding that petitioner's conviction in violation of Minn. Stat. § 609.2242, subd. 1(1) (misdemeanor domestic assault) qualifies as a crime of violence under 18 U.S.C. § 16(a), rendering him ineligible for cancellation of removal. The court also concluded that the Board did not abuse its discretion in denying petitioner's motion for reconsideration.

Dominguez-Herrera v. Sessions, 850 F.3d 411 (8th Cir. 2017).

The Eighth Circuit held that the BIA did not err in determining that the municipal judgments against the petitioners were criminal convictions.

CRIMINAL

United States v. Swopes, 886 F.3d 668 (8th Cir. 2018) (en banc).

The Eighth Circuit determined that a second-degree robbery conviction in violation of Mo. Rev. Stat. § 569.030.1 (1979) is a crime of violence under the “force” clause of the ACCA’s 18 U.S.C. § 924(e)(2)(B), which is analogous to 18 U.S.C. § 16(a). Specifically, the court determined that the Missouri second-degree robbery statute required the use or threatened use of violent force and overruled the panel decision to the contrary in *United States v. Bell*, 840 F.3d 963 (8th Cir. 2016). Note: Effective January 1, 2017, Missouri amended its second-degree robbery statute to require “physical injury to another person,” Mo. Rev. Stat. § 570.025.1; the court only addressed the second-degree robbery statute in effect at the time of conviction in 1994.

United States v. Libby, 880 F.3d 1011 (8th Cir. 2018).

The Eighth Circuit affirmed the district court’s sentence, concluding that petitioner’s conviction in violation of Minn. Stat. § 609.245, subd. 1 (first degree aggravated robbery) is categorically a violent felony under the elements clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)). In arriving at its conclusion, the court determined that simple robbery under Minn. Stat. § 609.24, a constituent part of the crime defined under Minn. Stat. § 609.245, subd. 1, implicates violent force due to its express requirement that a defendant communicate a threat to “overcome . . . resistance” or to “compel acquiescence.”

United States v. Peeples, 879 F.3d 282 (8th Cir. 2018).

The Eighth Circuit affirmed the district court’s judgment, concluding that petitioner’s conviction in violation of Iowa Code § 707.11 (1991) (attempted murder) constitutes a crime of violence for purposes of U.S.S.G. § 2K2.1(a)(4) (“crime of violence” given the same meaning as U.S.S.G. § 4B1.2(a), which is the same as 18 U.S.C. § 16(a)) because it has as an element the use or attempted use of force. In light of *United States v. Castleman*, 134 S. Ct. 1405 (2014), the court reasoned that although the language of the Iowa statute of conviction would include omissions, the statute still requires the use of force (such as in the example of a care-giver refusing to feed a dependent).

United States v. Hall, 877 F.3d 800 (8th Cir. 2017).

The Eighth Circuit affirmed the district court’s sentence, concluding that the petitioner’s conviction in violation of Tex. Penal Code Ann. § 29.02 (second-degree robbery) constitutes a violent felony under the force clause of ACCA, 18 U.S.C. § 924(e)(1) and a crime of violence under U.S.S.G. § 4B1.2(a)(1) (same as 18 U.S.C. § 16(a)).

United States v. Boman, 873 F.3d 1035 (8th Cir. 2017).

The Eighth Circuit reversed the district court's sentence and remanded (following the Supreme Court's vacatur of its decision), concluding that petitioner's convictions in violation of 18 U.S.C. § 924(c)(1) (using or carrying a gun during and in relation to a crime of violence) are not categorically violent felonies under the ACCA's force clause, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)).

United States v. Minnis, 872 F.3d 889 (8th Cir. 2017).

The Eighth Circuit affirmed the district court's judgment, concluding that petitioner's prior conviction in violation of Mo. Rev. Stat. § 565.050 (first-degree attempted assault) constitutes a crime of violence under U.S.S.G. § 4B1.2(a)'s force clause (same as 18 U.S.C. § 16(a)).

United States v. McMillan, 863 F.3d 1053 (8th Cir. 2017).

The Eighth Circuit vacated the district court's sentence, concluding that Minn. Stat. § 609.71, Subd. 3 (third degree riot) is overbroad and indivisible and therefore not categorically a crime of violence under USSG § 4B1.2(a)(1) (same as 18 U.S.C. § 16(a)).

United States v. Fields, 863 F.3d 1012 (8th Cir. 2017).

The Eighth Circuit reversed the district court, concluding that Mo. Rev. Stat. § 565.060.1(3) (second-degree assault) is not a violent felony under ACCA's elements clause (a.k.a. force clause), 18 U.S.C. § 924(e)(2)(B)(i) (same as 18 U.S.C. § 16(a)) because it minimally encompasses reckless driving resulting in injury.

Fletcher v. United States, 858 F.3d 501 (8th Cir. 2017) as amended (July 12, 2017).

The Eighth Circuit affirmed the district court's denial of the defendant's motion to vacate his conviction, concluding that a conviction under the Nebraska terroristic threats statute, Neb. Rev. Stat. § 28-311.01(1), categorically qualifies as a violent felony under the ACCA force clause, 8 U.S.C. § 924(e)(2)(B)(i).

United States v. Mata, 869 F.3d 640 (8th Cir. 2017).

The Eighth Circuit affirmed the sentencing enhancement of the district court, concluding that Minn. Stat. Ann. § 609.344(1)(c)(2004) (third degree criminal sexual conduct) constitutes a crime of violence under the elements clause of the ACCA, 18 U.S.C. § 924(e)(2)(B)(i) (same as 18

U.S.C. § 16(a)), and that the district court did not err in applying the modified categorical approach to find that petitioner's conviction necessarily involved the use of force.

United States v. Irons, 849 F.3d 743 (8th Cir. 2017).

The Eighth Circuit affirmed the district court's imposition of a 15-year mandatory minimum sentence under the ACCA, relying on *United States v. Dudley*, 230 F.3d 1364 (8th Cir. 2000)(U.S.S.G. case), to conclude that Mo. Rev. Stat. § 217.385(1) (2000) constitutes a "violent felony."

United States v. Lamb, 847 F.3d 928 (8th Cir. 2017) *rehr'g en banc denied on Apr. 12, 2017.*

Holding that section 943.10(1m)(a) of Wisconsin Statute is facially overbroad, indivisible but not over-inclusive—after considering the realistic probability test—with respect to the "dwelling" element.

OTHER

Abuya v. Sessions, 873 F.3d 650 (8th Cir. 2017).

The Eighth Circuit denied the PFR, concluding that the DHS met its burden to prove that petitioner was removable because it presented unrefuted, substantial evidence that supported the IJ's determination that his fraudulent marriage was entered into with the intention of obtaining adjustment of status.

Patel v. Sessions, 868 F.3d 719 (8th Cir. 2017).

The Eighth Circuit granted the PFR, concluding that the Board abused its discretion in finding petitioner ineligible to adjust status for failure to establish the bona fides of her prior marriage and denying her motion to remand, concluding that although the IJ had sustained the charge of removability based on section 212(a)(6)(C)(i) "the instant proceedings established only that [petitioner] failed to meet her burden to prove that her marriage . . . was entered into in good faith for the purposes of a hardship waiver—a question that is separate from any finding of fraud."

Maric v. Sessions, 854 F.3d 520 (8th Cir. 2017).

The Eighth Circuit denied the alien's PFR, concluding that the alien was removable under section 212(a)(6)(C)(i) of the Act for willful misrepresentation and ineligible for a section 237(a)(1)(H)

waiver. The court noted that DHS presented evidence that “indicates [the alien] may have participated in the extrajudicial killings . . . [which] placed on [the alien] the burden to prove by a preponderance of the evidence that the statutory bar” found in section 212(a)(3)(E)(iii) did not apply. Contrary to the alien’s arguments, the court noted that the burden shift was appropriate because it is the alien’s burden to prove eligibility for relief. *See* 8 C.F.R. § 1240.8(d).